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Of Attorneys for Defendants Clatskanie PUD and Gregory Booth

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**TAMELA KEITH, an individual,**

Case No. 3:13-cv-01332-ST

Plaintiff,

**DEFENDANTS' ANSWER,  
AFFIRMATIVE DEFENSES AND  
COUNTERCLAIM**

v.

**CLATSKANIE PEOPLE'S UTILITY  
DISTRICT, a public body; GREGORY  
BOOTH, an individual,**

**JURY TRIAL DEMANDED**

Defendants.

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In answer to plaintiff's Complaint, defendants Clatskanie People's Utility District (the "PUD") and Gregory Booth, admit, deny and allege as follows:

**NATURE OF ACTION**

1.

Defendants admit that this is an action under federal and state law.

**JURISDICTION AND VENUE**

2.

Defendants admit that this court has jurisdiction to hear the claims in this case.

### **THE PARTIES**

3.

Defendants admit that Clatskanie People's Utility District is a public body organized under the laws of the State of Oregon with its principal place of business in Clatskanie, Oregon. Defendants further admit that Gregory Booth is the General Manager of the PUD.

### **ADMINISTRATIVE EXHAUSTION**

4.

Defendants admit that the complaint was filed before the expiration of ninety days after issuance of a Right to Sue letter by the Equal Employment Opportunity Commission.

### **FACTS**

5.

Defendants admit that it received tort claims notices dated April 26, 2013 and July 26, 2013.

### **GENERAL ALLEGATIONS**

6.

Defendants admit that plaintiff was an employee of defendant from August 6, 2001 to June 14, 2013.

7.

Except as specifically admitted in paragraphs 1 through 6 above, defendants deny each and every remaining allegation in plaintiff's complaint and the whole thereof.

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

8.

Plaintiff's complaint fails to state a claim upon which relief can be granted against any defendant.

**SECOND AFFIRMATIVE DEFENSE**

**(Legitimate Non-Discriminatory Reason)**

9.

Each personnel action of which plaintiff complains, if it occurred, was taken for legitimate, non-discriminatory reasons not prohibited by statute.

**THIRD AFFIRMATIVE DEFENSE**

**(Just and Reasonable Cause)**

10.

Defendants had just and reasonable cause to terminate plaintiff's employment.

**FOURTH AFFIRMATIVE DEFENSE**

**(Qualified Immunity)**

11.

The individual defendant at all times material acted reasonably and in good faith and is qualifiedly immune from liability on plaintiff's federal claims by virtue of the doctrine of qualified immunity.

**FIFTH AFFIRMATIVE DEFENSE**

**(Individual Immunity)**

12.

The only proper defendant to plaintiff's pendent state claims is defendant District, pursuant to ORS 30.265(1). As a result, defendant Gregory Booth should be dismissed.

**SIXTH AFFIRMATIVE DEFENSE**

**(Tort Claims Act)**

13.

The Oregon Tort Claims Act, ORS 30.260 – 30.300 *et seq.*, and all of its terms, limitations, and defenses, apply to plaintiff's claims. Any claims for damages by plaintiff is limited by the cap on damages set forth in the Oregon Tort Claims Act as to all state law claims.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Waiver and Estoppel)**

14.

Plaintiff's claims are barred by the application of the doctrines of waiver and estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Preclusion of Punitive Damages / Federal & State Claims)**

15.

Pursuant to the Oregon Tort Claims Act, and applicable federal law, plaintiff cannot recover punitive damages from a public entity.

**NINTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

16.

Portions of plaintiff's claims are barred by the applicable statute of limitations.

**TENTH AFFIRMATIVE DEFENSE**

**(ORS 659A.885)**

17.

Plaintiff's damages for her statutory claims are subject to the limitations set forth in ORS 659A.885.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Federal Damages Limitations)**

18.

Plaintiff's claims for relief, brought pursuant to 42 U.S.C. 2000e-2(a), are subject to the damages limitations set forth in 42 U.S.C. § 1981(a)(b)(3).

**TWELFTH AFFIRMATIVE DEFENSE**

**(Faragher/Ellerth)**

19.

At all material times, defendant had in place a policy against sexual harassment in the workplace, and a policy regarding reporting sexual harassment. Defendant took all prompt corrective remedial action in response to any complaint of sexual harassment.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Cap on Non-Economic Damages)**

20.

Plaintiff's intentional infliction of emotional distress claim is subject to the cap on non-economic damages set forth in ORS 31.170, as that claim was not recognized by Oregon common law prior to 1857.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Reservation to Assert Additional Defenses)**

21.

Defendants reserve the right to assert additional claims and defenses as discovery unfolds.

**DEFENDANT'S FIRST COUNTERCLAIM**

**(Costs and Attorney Fees)**

22.

As the prevailing party, defendants are entitled to an award of costs and attorney fees pursuant to ORS 20.105, ORS 20.107, ORS 659A.885 and 42 USC § 1988.

23.

Defendants demand trial by jury.

WHEREFORE, having fully answered plaintiff's complaint, defendants pray that it be dismissed, that plaintiff take nothing thereby and that defendants be awarded their costs and disbursements as well as reasonable attorney's fees incurred herein.

DATED this 21st day of October, 2013.

/s/ Ronald W. Downs  
Ronald W. Downs  
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(503) 375-8898  
Of Attorneys for Defendants Clatskanie People's  
Utility District and Gregory Booth

Defendants herein request trial by jury on those issues properly submitted to a jury.

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Utility District and Gregory Booth

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM on:

Michael R. Seidl  
Attorney at Law  
121 SW Morrison St., Suite 475  
Portland, Oregon 97204

Attorney for Plaintiff

by the following indicated method or methods:

- ☒ by **electronic means through the Court's Case Management/Electronic Case File system** on the date set forth below;
- ☐ by **faxing** a copy thereof to each attorney at each attorney's last-known facsimile number on the date set forth below;
- ☐ by **mailing** a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the plaintiff's last-known office address listed above and depositing it in the U.S. mail at Salem, Oregon on the date set forth below;
- ☐ by causing a copy thereof to be **hand-delivered** to said attorney at each attorney's last-known office address listed above on the date set forth below;
- ☐ by sending a copy thereof via **overnight courier** in a sealed, prepaid enveloped, addressed to each attorney's last-known address on the date set forth below.

DATED this 21st day of October, 2013.

/s/ Ronald W. Downs  
Ronald W. Downs  
OSB #920530  
(503) 375-8898  
Of Attorneys for Defendants Clatskanie  
People's Utility District and Gregory Booth

**CERTIFICATE OF SERVICE**